



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE*

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Secretary of Natural Resources

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### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MOUNTAIN VIEW BREWERY, LLC FOR DEVIL'S BACKBONE OUTPOST BREWERY Unpermitted Discharge**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mountain View Brewery, LLC regarding the Devil's Backbone Outpost Brewery for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Mountain View" means Mountain View Brewery, LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Mountain View is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
13. "Site" means the Devil's Backbone Outpost Brewery, a commercial and retail brewing facility located at 50 North Wind Lane in Rockbridge County, Virginia
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mountain View owns and operates the Site. Mill Creek is located approximately 900 feet west of the Site.
2. Mill Creek is located in the James River Basin and is listed in DEQ's 305(b)/303(d) report as impaired for aquatic life use due to violations of the General Standard for Benthics, and is impaired for recreational use due to violations of the standard for bacteria. The sources of pollution are listed as wildlife other than waterfowl, non-point sources, and agriculture.
3. On March 26, 2018, DEQ received a citizen complaint alleging that discolored water was flowing from the Site and discharging into Mill Creek.
4. On March 27, 2018, DEQ investigated the complaint with representatives of Mountain View and observed that active construction of an expanded parking area was underway at the Site, with surface drainage directed towards a stormwater management basin (basin) located at the western portion of the Site. DEQ observed an odorous, foamy, discolored flow discharging from a stormwater conveyance pipe within the Site and into the basin. DEQ observed that the accumulated odorous, foamy, and discolored flow was discharging from the basin and flowing downstream into Mill Creek. During the investigation at the Site, Mountain View was unable to identify the source of the discharge. DEQ issued a Request for Corrective Action to Mountain View, directing Mountain View to determine the source and eliminate the discharge.

5. On April 2, 2018, Mountain View reported to DEQ that initial cursory camera and dye tracing inspections of stormwater and sewer lines leading from the Site, performed by a retail plumbing company, did not provide any conclusive source of the discharge. Initial laboratory sampling of the discharge indicated elevated levels of solids, E. coli, chemical oxygen demand, phosphorus, and nitrogen, but did not point to a conclusive source. Mountain View advised that no planned or as-built drawings of the Site's stormwater, sanitary sewer, or process wastewater piping were available, and efforts were underway to identify and diagram these piping configurations to facilitate determination of the source of the discharge.
6. On April 6, 2018, Mountain View advised DEQ that the accumulated contents of the basin were periodically pumped to the sanitary sewer.
7. On April 11, 2018, April 12, 2018, and April 16, 2018, DEQ staff performed additional investigative and compliance assistance visits and observed continued discharge of the discolored flow into the basin, discharging from the basin, and flowing downstream.
8. On April 18, 2018, Mountain View advised DEQ that an inflatable plug had been installed within the outlet pipe from the basin to stop discharge from the basin, and contents of the basin were continuing to be periodically pumped to the sanitary sewer. In addition, Mountain View reported to DEQ that continued investigation of existing guttering, drains, and subsurface piping at the Site had identified some instances of compromised stormwater pipes allowed groundwater infiltration, but had not yet yielded any conclusive source of the discharge, which continued to flow to the basin.
9. On April 18, 2018, Mountain View reported to DEQ that the plugged discharge pipe at the basin was failing due to increased pressure, and a small quantity of the basin contents were observed seeping around the pipe and discharging from the basin. Mountain View advised that contents of the basin were continuing to be periodically pumped to the sanitary sewer.

Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such water for domestic or industrial consumption, or for recreation, or for other uses..."

9 VAC 25-31-50.A states that: "Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses..."

10. On April 23, 2018, DEQ issued NOV No. 2018-VRO-0003 to Mountain View for the violations noted above.
11. On May 1, 2018, DEQ staff met with representatives of Mountain View by teleconference to discuss the violations, and Mountain View reported that an inflatable plug had been placed in an upgradient manhole and the continuing non-stormwater discharge was diverted away from the basin and directly into the sanitary sewer. In addition, Mountain View advised that a third-party consultant would be hired to perform a more rigorous and detailed investigation and assessment of the Site's stormwater and process wastewater pipe flows in order to conclusively determine the source of the non-stormwater discharge.
12. Throughout the months of June 2018, July 2018, and August, 2018, Mountain View consistently provided updates to DEQ regarding the status of the ongoing investigation. During these months, Mountain View employed the use of ground penetrating radar and closed circuit television videoing to investigate and map the Site's piping network. Mountain View used the data to identify specific deficiencies and as a guide for needed corrective actions to prevent future discharges. In addition during this timeframe, DEQ staff met at the Site and corresponded with representatives from Mountain View multiple times to provide compliance assistance and evaluate the status of conditions at the Site.
13. On August 10, 2018, Mountain View reported to DEQ that the investigation had been completed and the findings indicated significant deterioration throughout the Site's process lines, allowing for both loss of process liquids and the substantial intrusion of groundwater in numerous locations. The report detailed the repairs already completed to date, and a short-term work plan for priority repair and replacement projects to be completed during the remaining months of 2018.
14. On January 17, 2019, DEQ staff met with representatives of Mountain View at the Site to discuss the repair and replacement projects completed during 2018, evaluate the progress towards eliminating the non-stormwater discharge, and discuss prioritization of the remaining corrective actions. During the Site visit, DEQ observed a small quantity of basin contents seeping around the plugged outlet pipe and discharging from the basin. On February 19, 2019 Mountain View submitted a written update to DEQ that a replacement plug had been installed in the outflow pipe immediately after the Site visit and flow from the basin had ceased.
15. On March 21, 2019, Mountain View provided to DEQ an updated schedule for all remaining repair and replacement projects approved for future funding phases, with all necessary corrective actions to be completed by December 31, 2020. This report also included the completed projects for 2018. Phased remedial projects include, but are not limited to, replacement of the entire main sanitary cleanout pipeline, replacement of numerous trench drains within multiple production areas, and replacement and repair of stormwater collection pipes at numerous locations at the Site

16. Mill Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
17. Based on the results of the March 27, 2018, April 11, 2018, April 12, 2018, April 16, 2018, and January 17, 2019 inspections, and the May 1, 2018 meeting, the Board concludes that Mountain View has violated Va. Code 62.1-44.5 and 9 VAC 25-31-50.A by discharging wastewater from the Facility as described in paragraph C(2) through C(14), above.
18. In order for Mountain View to complete its return to compliance, DEQ staff and representatives of Mountain View have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mountain View, and Mountain View agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$30,712.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Mountain View shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mountain View shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Mountain View for good cause shown by Mountain View, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2018-VRO-0003 dated April 23, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mountain View admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mountain View consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mountain View declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mountain View to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mountain View shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mountain View shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mountain View shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay

compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mountain View. Nevertheless, Mountain View agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after Mountain View has completed all of the requirements of the Order;
  - b. Mountain View petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mountain View.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mountain View from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mountain View and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.



13. The undersigned representative of Mountain View certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Mountain View to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mountain View.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Mountain View voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of October, 2019.



Amy T. Owens, Regional Director  
Department of Environmental Quality

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Mountain View Brewery, LLC voluntarily agrees to the issuance of this Order.

Date: 8/16/19 By: [Signature], General Manager  
Hayes Humphreys General Manager  
Mountain View Brewery, LLC

Commonwealth of Virginia  
City/County of Charlottesville

The foregoing document was signed and acknowledged before me this 21<sup>st</sup> day of

August, 2019, by Hayes Humphreys who is  
General Manager of Mountain View Brewery, LLC on behalf of the company.

[Signature]  
Notary Public  
346616  
Registration No.

My commission expires: March 31, 2020

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Unpermitted Discharge/Spill**

- a. Mountain View shall not discharge process wastewater from the Site. Mountain View shall maintain the plug in the receiving stormwater basin outlet, and pump the wastewater to either sanitary sewer or pump and haul the contents to the appropriate wastewater treatment facility, until the process wastewater discharge to the basin has been eliminated and all process wastewater contents in the basin have been removed and properly disposed.
- b. Mountain View shall immediately notify DEQ upon discovery of an unpermitted discharge, take steps to cease the discharge, and follow up within 5 days of the discharge as required by §62.1-44.5.
- c. Mountain View shall replace and repair damaged trench drains at the Site by the following dates:
  - (1) **By January 1, 2020**, the five damaged/leaking trench drains in Building #2 shall be repaired and/or replaced;
  - (2) **By December 31, 2020**, the six damaged/leaking trench drains in Building #1, in the areas referred to as the "Cellar" and the "Brew House", shall be repaired and/or replaced.
- d. Mountain View shall notify DEQ in writing within 30 days after completion of the projects referenced above in 1(c)(1, 2).

### **2. Reporting**

Mountain View shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2019**. Subsequent progress reports will be due every January 10, April 10, and July 10, and, until the cancellation of this Order. The quarterly progress reports shall contain:

- a. a summary of all work completed since the previous progress report in accordance with this Order;
- b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
- c. a statement regarding any anticipated problems in complying with this Order.

3. **DEQ Contact**

Unless otherwise specified in this Order, Mountain View shall submit all requirements of Appendix A of this Order to:

Tiffany R. Severs  
Enforcement Team Leader  
DEQ Valley Regional Office  
Mailing: PO Box 3000, Harrisonburg, Virginia 22801  
Location: 4411 Early Road, Harrisonburg, Virginia  
540-574-7878 (FAX)  
tiffany.severs@deq.virginia.gov